

IN THE HIGH COURT OF DELHI

CM(M) No.1642/2007

Mehtab Singh Balyan Petitioner
! through: Mr.S.N.Choudhary with
Mr.D.S.Chauhan, Adv.

VERSUS

\$ Smt. Nirmala & Others Respondents
^ through: None.

% DATE OF DECISION: 18.12.2007

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.(Oral)

1. Petitioner as well as first respondent are in dispute qua ownership and possession of a piece of land. Common case of both the parties is that Hari Kishan owned the land in question at some point of time.
2. Whereas Nirmla, R-1, claims right, title and interest in the land through a registered general power of attorney, agreement to sell and a will dated 5.5.2004 executed in her favour by one M.K.Tyagi who in turn claims right under

Hari Kishan through similarly executed documents, petitioner claims a direct interest under Hari Kishan and relies upon certain documents stated to be executed by Hari Kishan on 7.8.1997 being a general power of attorney, agreement to sell, receipt etc. But, the documents relied upon by the petitioner are not registered documents.

3. On the issue of interim injunction ,learned Trial Judge held that the documents relied upon by both parties entitled none to an injunction against each other. The appeal filed by respondent No.1 resulted in an interim injunction being passed in her favour. Reason given by the learned Appellate Judge is that documents relied upon by Nirmla are better documents for the reason they are registered documents. Qua the documents of the petitioner it has been held that being unregistered documents they would have lesser probated evidentiary value.

4. The land in question is a vacant land.

5. I concur with the reasoning of the learned Appellate Judge.

6. Before concluding I must note that unauthorized colonization is creating a problem in Courts. Possessory disputes are very difficult to resolve. The reason is that law requires evidence to be tested with reference to some admitted position at site, when the dispute relates to possession;

meaning thereby, rival versions are tested on some authentic factual situation at the site. Pertaining to unauthorized colonization the purity of evidence can never be tested for the reason everything is done illegally and there is no reference point wherefrom the Court can test the purity of the evidence led by respective parties. Unfortunately, the rule of the jungle prevails. He who is in possession retains the same.

7. Be that as it may, the view taken by the learned Appellate Judge is a reasonable and a probable view. The view taken by the learned Appellate Judge does not call for any interference under Article 227 of the Constitution of India.

8. The petition is dismissed in limine.

December 18, 2007
dk-bainsla

PRADEEP NANDRAJOG, J.